Supreme Court, U.S.
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No. 98-1755

In The

Supreme Court of the United States

BERK REALTY, INC.,

Petitioner,

v.

MERCER COUNTY TAX CLAIM BUREAU,

Respondent.

On Petition For A Writ Of Certiorari To The Pennsylvania Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE CASE

Petitioner, an Ohio corporate realty company, bought twenty-five acres in downtown Sharon, Pennsylvania, in 1984 for $400,000.00. It quit paying real estate taxes before 1990. After unsuccessful attempts by Respondent to sell it at tax sale in 1994, it was finally sold by judicial sale in 1997 when the tax deficiency had grown to then over $700,000.00. Petitioner attacked the judicial sale on the theory that under Pennsylvania law it should have been sold within one rather than three years of the unsuccessful tax sale. The trial court held that the delinquent taxpayer had no standing to so contend as the statutory purpose was to protect local governments against willful, persistent and long-standing delinquent taxpayers, rather than as a shield to such delinquents; and that the remedy asserted would further frustrate the statutory scheme. Petitioner appealed this to Commonwealth Court but failed to post a bond of $150,000.00 set by it to stay the sale, and the property was sold for economic redevelopment. That Court then dismissed the appeal as moot, and the Pennsylvania Supreme Court refused to allow further appeal.

Petitioner contends to this Court that the Pennsylvania courts erroneously applied Pennsylvania law and that it was denied due process in that it did not have a chance to save its property.

ARGUMENT

I. THE DECISION OF THE TRIAL COURT PERMITTING THE JUDICIAL SALE OF THE SUBJECT PROPERTY FOR DELINQUENT TAXES WAS CORRECT AND THERE WAS NO DENIAL OF DUE PROCESS.

The thrust of Petitioner's argument is that it "had no opportunity to save its property and thus was denied due process of law." (Petition for Writ of Certiorari, p. 4).

In fact, as found by the trial court without dispute, no taxes had been paid since at least 1990, attempted public upset tax sales in 1994 were unsuccessful, and the judicial sale which, when contested in 1997, occurred at a time when the delinquent taxes were in excess of $700,000.00 (p. 5a, 6a). Further, on its appeal to Pennsylvania Commonwealth Court, Petitioner was granted a stay of sale conditioned upon posting security of $150,000.00 which it did not do, and the judicial sale proceeded. Still no bids were received, so under applicable law the property reverted to the County Repository for Unsold Property which in turn sold it to a local economic development agency.

Therefore, Petitioner had every opportunity to save its property for years and years and failed to do so. It then further failed to effect a stay of the required sale. The property obviously had to be sold so that taxes would once again be paid.

II. THE DECISION OF THE PENNSYLVANIA COMMONWEALTH COURT OF APPEALS WAS CORRECT.

The Pennsylvania Commonwealth Court dismissed Petitioner's appeal to it as moot (2a). Petitioner's Petition for Allowance of Appeal to the Pennsylvania Supreme Court was then denied (1a). Petitioner now seeks this Court's further review as to whether Pennsylvania law was properly applied by its own appellate courts in this matter. The Pennsylvania Court's decisions in this case are clearly based on state law that is both adequate and independent and involve interpretation of a state statute by the state court. There is not a constitutional issue or any compelling reason to grant a Writ of Certiorari.

Further, the decision of the Pennsylvania Commonwealth Court was, as its opinion states, dictated by both Pennsylvania case law and statutory law (4a). Petitioner does not challenge the constitutionality of the involved statute (§5105(f) of the Judicial Code, 42 Pa. C.S. §5105(f)). If it did, the clerk would certify that fact to the state attorney general. 28 USCS §2403(b). Neither does Petitioner claim the right to a supersedeas without bond is constitutionally guaranteed.

Since the subsequent sale to a third party cannot be set aside, the appeal filed is moot. Finally, as the Commonwealth Court's opinion notes, Petitioner is not without remedy as it has filed an action seeking damages in excess of $1,000,000.00 (4a).

CONCLUSION

The Petition for Writ of Certiorari should not be granted.

Respectfully submitted,

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